DATIN PEGGY TAYLOR

v.

UDACHIN DEVELOPMENT SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
VOHRAH J
[CIVIL SUIT NO. 656 OF 1977]
22 SEPTEMBER 1983

CONTRACT: *Professional services of architect - Contract for building project - Whether there was abandonment of project - Effect of abandonment - Applicability of PAM guidelines.*

The plaintiff, as personal representative of the estate of her late husband, an architect, sued the defendant for the sum of RM687,500 for services rendered by the architect's sole-proprietorship firm in respect of a proposed multi-storeyed commercial and residential complex to be built on land situated in Kuala Lumpur. The architect was commissioned in 1964 by a company called "Chin Brothers (Malaya) Sdn. Bhd.", which changed in name to "Udachin Development Sdn. Bhd." in 1974. In 1972 the architect had sent a draft agreement to Chin Brothers regarding his appointment upon the terms of the Malaysian Institute of Architects Conditions of Engagement and prescribed professional charges therein for the time being in force. However, the terms of the architect's engagement were set down two years later in a letter (P14) sent to the architect by the defendant. Certain payments were made to the architect, the last payment being in August 1975. In November, 1975, the architect submitted a progress report on the request of the defendant. In October, 1976, the architect had to return to England for medical treatment. His senior assistant successfully applied for the extension of the development order. In December, 1976, the plaintiff, as the architect's duly appointed attorney, requested from the defendant payment of fees still outstanding, and later sent a notice of demand claiming the balance of the fees for abandonment of the project. The defendant denied abandonment or any liability for abandoned fees.

Held:

[1] There had been abandonment of the project on the part of the defendant.

[2] The provisions of PAM guidelines with regard to abandonment could be relied on. Under the PAM guidelines, if an architect stipulates those guidelines as forming an integral part of his contract of engagement and the stipulation is accepted by his client, he is entitled to claim two-thirds of his full fee on the basis of abandonment (or of work he had done).

[3] In the absence of any tendered contract price, the plaintiff was entitled to two-thirds of his full fees based on the estimate by the quantity surveyors at the time the architect ceased work on the project, which estimate was the last cost estimate he had knowledge of.

[Judgment for the plaintiff.]

Legislation referred to:
Evidence Act 1950, s. 114 illus.(g)

For the plaintiff - G. Krishnan
For the defendant - B.E. Teh

JUDGMENT

Vohrah J:

The plaintiff, as personal representative of the estate of her late husband Datuk Eric Taylor (the architect), sued Udachin Development Sdn. Bhd. (Udachin) for the sum of RM687,500 for professional services rendered by the architect's sole-proprietorship firm known as "Eric Taylor dan Rakan-Rakan" in respect of a proposed multi-storeyed commercial and residential complex (the project) to be built upon land held under Certificate of Title No. 1836 for Lot.No. 53 Section 57 in the city of Kuala Lumpur (the land), fronting Jalan Raja Chulan formerly known as Jalan Weld. The plaintiff claims the aforesaid sum on the ground that there has been abandonment of the project by Udachin or, in the alternative, on the ground of *quantum meruit.*

The relevant facts which I have found proved or undisputed are as follows. The land for the project was purchased at the price of RM3 per square foot by a company called "Chin Brothers Company Sdn. Bhd." (the first company) in 1963 through the recommendation of the plaintiff. On 14 June 1963 the company called "Chin Brothers (Malaya) Sdn. Bhd." (the second company) was incorporated (see P2). In 1964 the first company commissioned the architect to draw up plans for 2 blocks consisting of 52 units of bachelor apartments to be called "Weld Mansions" in respect of which development approval was given on 15 December 1964 (see P3). In 1965 the architect was instructed to draw up plans for a 13-storeyed hotel instead. In 1968 the plans had to be changed again for a proposed 15-storeyed hotel with a bowling alley and a 4-storeyed shopping arcade for which development approval was also given by the Ministry of Local Government and Housing on 14 September 1970 (see P4). On 3 February 1970 the land was transferred from the first company to the second company (see P1) and on 15 February 1971 the second company wrote to the architect stating that it owned the land (See P5). On 18 January 1974 the second company entered into an agreement with Perbadanan Pembangunan Bandar (Uda) whereby the second company agreed "to join Uda in the redevelopment of" the land and Uda undertook not to attempt "to gain control of the parent company, Chin Brothers Co. Sdn. Bhd." which was to be allowed, *inter alia*, "to buy up the two penthouses situate on the top floor of the project at cost price, such cost price to be decided by the quantity surveyor and the architect" (see D52). The second company on 1 April 1974 changed its name from "Chin Brothers (Malaya) Sdn. Bhd." to "Udachin Development Sdn. Bhd.", a company limited by shares (see P2). On 31 March 1971 the planning authority of the federal capital by its development order P6 granted planning permission for the development of the proposed 15-storeyed hotel with its 4-storeyed shopping arcade subject to 11 conditions. On 20 October 1971 the second company through its managing director, Chin Swee Loon, wrote to the architect intimating that it was in "the latter stage of negotiating finance and should conclude in the near future" and that when it was "quite certain of obtaining the finance" it would instruct its engineers, Messrs Peter Chin Associates, to prepare the necessary plans in consultation with the architect "for submission" (see P7). Up to this stage the architect had been dealing with the second company as his client. On 12 December 1972, when it seemed clear to the architect that the position of Uda *vis-a-vis* the second company had been clarified, the architect wrote the letter P9 suggesting that the basis of his engagement in respect of the "enhanced scheme", resulting apparently from the company joining up with Uda, be set down in writing and he forwarded therewith a draft agreement D.53A relating to the appointment of the architect "upon the terms of the Malaysian Institute of Architects Conditions of Engagement and prescribed professional charges therein for the time being in force ..." (see Clause 1 of D53A). There was no

immediate response from the second company to this letter. When the second company transformed itself into "Udachin Development Sdn. Bhd." on 1 April 1974 the project came to be referred to as "Wisma Chinda" and it was to be a 28-storeyed commercial and residential complex consisting of a car-park to be located in the basement with three split levels and on part of the ground floor; shopping arcades on part of ground floor and on the first four floors; a restaurant, coffee-house, roof-garden and roof-terrace on the 5th floor; a swimming pool and recreation area on the 19th floor; apartments from the 20th to the 26th floors totalling 48 units; and a 2-unit penthouse on the 27th floor (see P11). Although the board of directors of Udachin consisted of 12 members, the effective day-to-day management of the affairs of Udachin was in the hands of the project committee comprising four members, namely Peter Chin (DW1), his cousin George Chin, Kassim Sotin and Zulkarnain bin Ariffin (PW3) and about two years after the despatch of P9, George Chin, acting purportedly on behalf of Udachin, set down the terms of the architect's engagement in a letter dated 29 October 1974 (see P14) as follows:

Udachin Development Sdn. Bhd.
78 Jalan Raja Chulan, Kuala Lumpur, 05-10.
Tel: 290753/299157.

101, Brewster Road,Ipoh.

Ref:

Date: 29th October, 1974.

Datuk Eric Taylor,
M/s. Eric Taylor & Partners,
11D, Jalan Parry,
KUALA LUMPUR 04-04.

Dear Datuk,

Re: WISMA CHINDA

We hereby confirm your appointment as our Project's Architects.

As agreed upon your total fees shall be based on 3 3/4% (Three and three quarter percentum) of the final quantity surveyors' estimates accepted by us or the tendered contract price, whichever is the lower. Variations, consultant fees, development charges, contribution, and other payments of similar nature, shall not be considered in the determination of such price.

As regards scheme of payment, our Board has decided on RM20,000 per month commencing from November 1974. This scheme of payment shall be reviewed and amended as and when necessary due to changes in schedule of construction progress of work and other factors relating to the project.

Enclosed is our cheque of RM20,000 being payment as referred to above.

Yours faithfully

(Signed)
George Chin

c.c.

Encik Kassim Sotin,
UDA.

On 4 November 1974 the architect wrote P15 asking for clarification of the word "variations" in paragraph 2 of P14 but otherwise apparently accepting the scheme of payment as suggested in P14 which had forwarded the first instalment of RM20,000 commencing from the month of November 1974. The instalments continued for 9 months up to and including July 1975 but for the next month August, the architect received only RM10,000 described by George Chin in his letter of 8 August 1975 (see P58) as "interim fees" after which the architect received no further payments. On 6 November 1975 the architect then wrote the letter P16 to Udachin in which he expressed regret for the cessation of the instalment payments towards his professional fees and intimated that he would stop all his technical meetings, his dealings with the other consultants, his work on the working drawings for the project and also that he would have to retrench staff on the ground that he could not afford to carry on his business without his fees being paid. On 22 November 1975 George Chin on behalf of Udachin replied to the architect that the partners of Udachin had discussed the contents of P16 and that it was decided that the architect should submit a progress report of the work done by him "to date in order for us to review the situation" (see P17). On 27 November 1975 the architect submitted his progress report (see P18) and requested the fixing of a date by Udachin for the purpose of having a meeting of the consultants engaged in the project "in order to work out a possible and definite programme of works for the consultants." There was no reply to P18 and no further instalment payments were made to the architect by Udachin. The architect fell ill about this time and was recommended to return to England for medical treatment which he did on 31 October 1976. On 1 November 1976 the architect's senior assistant, Wong Yuen Kee (PW4), on the instruction of Udachin successfully applied for the extension of the development order (see P12) from the planning officer of Dewan Bandaraya (see P22, P23, P24 and D43). During the architect's absence from Malaysia the plaintiff was his duly appointed attorney (see P19) and, acting on the architect's instructions transmitted from time to time by telephone, the plaintiff sought legal advice and sent the letter P20 dated 8 December 1976 requesting payment of RM330,000 as outstanding fees from the time of short payment in August 1975 up to and including December 1976 at the rate of RM20,000 per month as stipulated in paragraph 3 of P.14. This letter was signed on behalf of "Eric Taylor Dan Rakan-Rakan". On 13 December 1976 DW1 acting on behalf of Udachin replied by letter P21 intimating that the payment of fees had been negotiated directly with the architect and drawing attention to the second sentence of paragraph 3 of P14 where it was stipulated that the scheme of payment by instalment of RM20,000 per month "shall be reviewed and amended as and when necessary due to changes in schedule of construction progress of work and other factors relating to the project". There was also a request by Udachin for a meeting with the architect for confirmation of the basis of payment (at a time when the architect was out of the country). Then on the instruction of the architect who was still in London the plaintiff caused a firm of solicitors to send a notice of demand dated 17 December 1976 (see P25) for the sum of RM751,600 stated to be the balance of the fees for abandonment of the project by Udachin after taking into account the sum of RM190,000 which the architect had received for the period November 1974 to August 1975 under the scheme of payment stipulated in P14. The penultimate paragraph of P25 reads:

> We are further instructed that our clients have sent you an A.R. Registered letter dated 6th November, 1975 demanding immediate compliance of your monthly payments, failure of which our clients are entitled to treat the whole project as abandoned. We are instructed that you have not even extended the courtesy of a reply to our clients. Consequently as a matter of course our clients are entitled to treat the whole Project as abandoned. Consequently as a matter of course our clients presumed that you have abandoned the above Project. As such our clients are now claiming from you the outstanding sum of RM751,600 being made up as follows:-

1) To abandoned fees	RM941,600
Less: Payment made	RM190,000
Balance due	RM751,600

On 27 December 1976 DW1 on behalf of Udachin replied by registered letter P26 denying that Udachin had abandoned the project as it had been in contact with the architect for the most part of 1976 and enquiring when it could meet the architect "to discuss the matter." On 14 February 1977 the plaintiff's solicitors wrote P27 to Udachin intimating that the architect did not wish to enter into any protracted discussions and requesting that Udachin settle the matter amicably by paying up the sum of RM751,600 demanded in P25. Udachin's solicitors then replied by way of P28 denying that the project had been abandoned as alleged in P25 and stating that (accordingly) there was no liability on the part of Udachin to pay abandoned fees. When the plaintiff discovered that the architect had made a mistake in calculating the amount of the abandoned fees in the architect's handwritten slip of paper P30, the plaintiff's solicitors sent Udachin the letter dated 26 February 1977 giving the corrected figure of RM687,500 as the abandoned fees due to the architect arrived at as follows:

1) Estimated total cost of scheme	RM35,100,000	
2) Abandoned fees calculated at 2/3 of 3 3/4% of estimated total cost	RM	877,500
3) Less Payment made	RM	190,000
Balance due	RM	687,500

The estimated total cost of RM35,100,000 was derived from P32, the 5th revised cost estimate of the project prepared by "Bridgewater, Coulton dan Rakan-Rakan" (the quantity surveyors) in January 1975, on the basis of plans submitted by the architect and "Juantara Konsultant Sdn. Bhd." (the structural engineers) wherein at the material time DW1 practised as a civil engineer. The quantity surveyors stopped work on the project in November 1975 but they did not consider the project to have been abandoned. There being no response from Udachin, the plaintiff on the instruction from the architect caused a specially endorsed writ to be served on Udachin in the third week of March 1977 (see P31A and P31B) resulting in these proceedings in Court. There is no law prescribing the scale of fees for architects. However the Institute of Architects called "Pertubohan Akitek Malaysia" (PAM), which is a voluntary organisation on practising architect registered with the Board of Architects set up under the Architects Act, 1967 is obliged to join, has provided certain guidelines called "Conditions of Engagement and Scale of Professional Charges" (see P50). A practising architect who is a member of PAM is under no legal obligation to charge the scale fees prescribed in P50 so that the architect could have agreed that his fee be paid on a lower scale as stipulated in P14. The writ in this case was issued on 15 March 1977 well before the death of the architect on 8 August 1977.

On the basis of the unchallenged or proven facts above described, it is clear that the architect ceased carrying out his professional duties after submitting the progress report P18 when it evoked no response from Udachin despite the request therein by the architect, ostensibly at the instance of the other consultants, to convene a joint meeting of the consultants with Udachin "to work out a possible and definite programme of works for the consultants". In the light of the aforesaid facts, the question I have to decide is whether Undachin had abandoned the project on or about 27 November 1975 when P18 was submitted to it at its request. I am not unmindful of the act of PW4 in applying for the renewal of the development order but this was done on the instruction of the architect before he left for London on 31 October 1976 as is to be expected of any reputable architect as a matter of course.

The plaintiff and PW4 testified that to their knowledge no meeting was in fact held. PW4 who was the actual architect in charge of the project would surely have known if a meeting actually took place. DW1 however stated that he and his father met the architect some time in December 1975 after receiving P18 and explained to him that after review they wanted to cut costs and that they would be talking to the other consultants separately on the same matter. No witness was called by the defence to corroborate DW1's statement. As the claim involved a large sum of money I would have expected the defence to have procured the attendance of Chin San Loon and also of Robert Chin from Australia to corroborate DW1's evidence or their evidence could have been procured *de bene esse*. No such effort was made and, I think, in the circumstances a presumption arises under s. 114, illustration (g), of the Evidence Act 1950 to the effect that their evidence if produced would prove unfavourable to the defence. Even without invoking these provisions, I am, on a balance of probabilities, satisfied that the evidence of the plaintiff and PW4 was reliable having regard to their general demeanour and the forthright manner in which they presented their evidence on this point. I am satisfied that they were speaking the truth. Further DW1 struck me as too intelligent and too experienced a developer not to have kept a record of the meetings that he alleged were held with the architect especially in the circumstances when litigation must have been anticipated by any reasonable person. It was obvious that Udachin was dragging its feet with regard to the payments of the architect's fees because it was never in question that the plaintiff had to go and see the chairman and deputy chairman of Uda on 15 October 1976 about non-payment.

I am satisfied that the architect ceased carrying out his professional duties after submitting, at the request of Udachin, the progress report P18 (dated 27 November 1975) when it evoked no response from Udachin either in the form of the continuing payment of fees by instalment or the convening of the joint meeting of the consultants engaged in the project asked for by the architect ostensibly at the instance of the other consultants. I am also satisfied that up to 8 December 1976 when the plaintiff wrote P20 to Udachin she was claiming on behalf of the architect his fees up to and including December 1976 in the sum of RM330,000. It was only when the solicitors' letter P25 dated 27 December 1976 was sent that the architect had construed the non-response from Udachin as constituting abandonment of the project on its part. I accept the evidence of the plaintiff that there was no reply from Udachin to P18 or any communication whatsoever from that quarter resulting in the plaintiff having to go and meet the chairman of Uda for his intervention in the matter. I also accept PW4's evidence that there was no meeting because if there had been one with the architect he would surely have known of it having been the architect directly in charge of the project. DW1's manner however was equivocal. He merely stated that he remembered that he and his father met the architect some time in December 1975. I could not help thinking this piece of the evidence was self-serving and not reliable. I therefore find as a fact that there was actually a breakdown in communication between the architect and Udachin despite his instruction to PW4 to remind Udachin to renew the development order for the project for such instructions, as I have said, would, in my view, be forthcoming from any responsible architect even in circumstances such as these where relations between the architect and his client must have been strained. Certainly by the time the architect left Kuala Lumpur on 31 October 1976 for medical treatment in London there was no activity at all on the project and there was already an intention on his part evidenced by P30 to claim for non-payment of fees as he must have considered that the failure to pay the instalments as prescribed in P14 constituted a repudiatory breach of the terms of his letter of appointment. The question I have to decide is whether the provisions of the PAM guidelines P50 with regard to abandonment could be relied upon or could be called in aid when the contingency of abandonment was not provided for in P14.

I have no doubt that the architect intended all along, having regard to D53 and D53A, to put his employment relationship on the basis of the guidelines because Clause 1 of D53A speaks of "the building project upon the terms of the Malaysian Institute of Architects Conditions of Engagement and prescribed Professional Charges therein for the time being in force, a copy whereof is annexed hereto". DW1 however testified that when he received D53 which was dated 12 December 1972 he had taken exception to the foregoing provision because "PAM rules are a disadvantage to the client". Accordingly, he stated, at the request of the project committee of Udachin, in the light of the second company's experience, he and George Chin formulated P14. He explained that the percentage of 3 3/4% as the basis for the calculation of the fee in P14 is different from that of 7 1/2% in the PAM guidelines being half of that in the guidelines. He explained further that the percentage according to the PAM guidelines was to be based upon the cost of the project when it was finally completed but P14 intended the calculation to be based on either "the final quantity surveyors' estimates accepted by (Udachin) or the tendered contract price, whichever is the lower." I accept his evidence that there was the intention on the part of Udachin to be regulated by this formula and that there was agreement on the part of the architect to this formula as there has been no evidence adduced by the plaintiff which showed that the architect had not agreed to his total fees being based on the 3 3/4% formula. I also note that there is no provision in P14 for the mode of payment in the event of the architect being able only to perform partial services because of abandonment or deferment of the project. In such an ambiguous situation the question arises as to whether or not the Court is entitled to imply into P14 the prevailing practice in the architectural fraternity in order to give business efficacy to the contract of employment subsisting between an architect and his client where the architect through no fault of his has to cease his professional duties because of the reduction and subsequent non-payment of his fees as a result of the unilateral act of his client in contravention of a scheme of payment prescribing that the sum of RM20,000 was to be paid every month subject to review and amendment "as and when necessary due to changes in schedule of construction progress of work and other factors relating to the project." Surely such a review and amendment must first be brought to the attention of and receive the assent of the architect. The deputy director of the corporate planning group in Uda who was a director of Udachin and a member of the 4 member project committee of Udachin at the material time, Zulkarnain bin Ariffin (PW3), admitted that a large sum of fees was owing to the architect on the basis of P14 because of the exhaustion of Udachin's internally generated funds and the slow-down in the market conditions and added that Uda was concerned about the stoppage of work which was intimated to Udachin by the architect's letter P16. There can, I think, be no question that at this time, in view of PW3's evidence, Udachin was suffering from a lack of available funds giving rise to the inference that even if it wanted to pay the architect it did not have the finances to do so. He said the project committee did not however at this stage consider the project as having been abandoned. He went on to say that the normal practice in dealings with the architect, with which he must be presumed to be fully conversant in view of Uda's active and widespread involvement in the field of urban development, is to pay an architect 1/3 of the total fees payable at planning approval stage, 1/3 at the tender stage and the balance 1/3 on completion of the project. He explained that this practice was the general rule and its purpose was to ensure that the architect was not paid his full fee until the project was completed. Hence the provision for review was reflected in paragraph 3 of P14. He explained further that although the reason for this provision was not clearly spelt out that was what Udachin intended. In other words what was provided therein was not what DW1 said he and George Chin had intended because of their experience in the second company but what in fact the project committee of Udachin had decided to

regulate payment of the architect's fees based on 3 3/4% of "the final quantity surveyor's estimates accepted by Udachin or the tendered contract prices, whichever is lower." I accept PW3's evidence that at the end of 1975 the project committee thought that the project would be delayed by one year and therefore it can be assumed that there was no intention on the part of Udachin to abandon it. PW4 stated in no uncertain terms that on completion of the 45 drawings as listed in P18 the architect had completed all the plans that were necessary for submission to the city architect for building approval and that this approval would have been obtained as a matter of course and that if there were variations these variations could only take place after the building approval had been given by the city architect. It is clear from his evidence that when Udachin received the 7th revised cost estimate of the quantity surveyors (see P45) in January 1976 the architect had already stopped work on the project and he was concerned only with P32, the 4th revised cost estimate. A practising quantity surveyor from the firm "Bridgewater, Coulton dan Rakan-Rakan" engaged by Udachin as its consulting quantity surveyors for the project, Wan Mokhtar bin Abdullah (PW5), in his evidence explained that the cost estimate as such represents the bill of quantities which is used as a tender document to enable the contractor to price the cost of a building project. He stated that his consulting quantity surveyors stopped work on the project in November 1975 after they had received all the plans from the architect necessary to put up the cost estimate P32 which was prepared in January 1975. They could not continue to work and complete the documents for tender because Udachin intimated to them in July 1977 that plans had to be revised by the architect and the consulting structural engineers as new fire legislation required such revision but this intimation, be it noted, was only given to them nearly two years after they had themselves stopped work on the bill of quantities for the project. He expressed his professional opinion that the failure by the client to give any instruction to the quantity surveyors after a period of about a year entitled them to treat their professional assignment to the project as having been abandoned although a lot would depend upon the relationship existing between the client and themselves as to whether they would treat the assignment as abandoned or not. He did also state that as far as they were concerned they did not consider that the project had been abandoned by Udachin. He further explained that when P32 was submitted 95% of the information that was necessary for the undertaking of the project to completion by the contractor was available therein and that the architect had done his part in providing all the drawings that were required of him. Their inability to provide the remaining 5% of the information for the full pricing of the project, as I understood him, was due to the consulting structural engineers not having furnished all the information required of them. The evidence of the representative of PAM, Graham Moggat (PW6), who at the time of the hearing was also the chairman of its practice committee, indicates that the word "variations" in the context of P14 would mean amendment to the scope of the work introduced after the signing of the building contract between, in this case Udachin and the building contractor involving some adjustment of the contract price and that this adjustment of the contract price can only take place after building approval had been obtained from the city architect. His examination in Court of the 26 working and detailed drawings of the architect (see P40) led him to the view that the architect had done enough work to provide sufficient information for the quantity surveyors to prepare their bill of quantities from which to form the basis for the calling of tenders for the purpose, as I understood him, of going into construction. According to him the practice was that an architect could treat a project as abandoned if after submitting the plans, as the architect had done in this case, no instructions were forthcoming from the client after a period of 3 months from the date of submission in which event he would be entitled to two-thirds of the full fee provided for under his contract

of engagement. In his view, even if there had been no abandonment the architect would still be entitled to the same amount for the work he had put in. His opinion was given as that of an expert by virtue of his standing as a practising architect and high official of PAM. I am satisfied that PW6's evidence is that of an expert and relevant to the proceedings. His expert opinion of the relevant part of paragraph D of P18 which reads:

> **Working Drawings**
>
> All working drawings in 1/8 scale have been completed and ready for submission to the akitek bandaraya for building approval subject to your instructions. Most of the major details have also been prepared and issued together with the working drawings to the quantity surveyor for his preparation of the bills of quantities. Below is a list of working and detail drawings completed.

was that the architect was seeking instructions from Udachin for building approval to be obtained for the working drawings. He would himself consider a lapse of 1 1/2 years from the date of P18 when no instructions were forthcoming as giving grounds for considering the project as abandoned. In the event, I am of the considered view that under the PAM guidelines as represented by P50 if an architect stipulates these guidelines as forming an integral part of his contract of engagement and this stipulation is accepted by his client he is entitled to claim two-thirds of his full fee on the basis of abandonment (or of work he had done) and in a situation such as this case he would be entitled to either two-thirds of the cost estimate of the podium (RM18,323,900) and the tower block (RM16,701,000) amounting to RM35,024,900 as the final quantity surveyors' estimate if that estimate was accepted by Udachin or two-thirds of the tendered contract price, whichever is lower. In the absence of any tendered contract price, I am of the view that P32 must be used as the basis for the quantity surveyors' estimate as that was the last cost estimate which the architect had knowledge of at the time he ceased work on the project and from which he wrote out the figure in P30. The point I have to consider is whether or not the PAM guidelines as to the calculation of fees in the event of abandonment (or for work done) can be imported into P14. In my view they should be so imported because they reflect the custom or practice of the architectural profession. P14 seems to me to be limited to the specific question of calculating the full fee when the project was successfully completed and did not provide for the contingency of abandonment and it is, in my opinion, therefore fair and reasonable to imply Clause 3(viii) read with Clause 3(iv) of P50 and P14. I accordingly enter judgment for the plaintiff in respect of fees due to the architect for abandonment of the project as follows:

1. Estimated total cost of the project	RM35,024,900	
2. Abandoned fees at 2/3 of 3 3/4% of estimated total cost	RM	875,622.50
3. To payment on account	RM	190,000
Balance due	RM	685,622.50

This sum of RM685,622.50 will bear 8% interest from the date of the service of the writ. The plaintiff will also be entitled to the costs of this suit.

Also found at [1984] 1 CLJ 36